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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,278	11/28/2001	David Guedalia	DLGNM-026XX	2332

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WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP
TEN POST OFFICE SQUARE
BOSTON, MA 02109

EXAMINER

PHAN, JOSEPH T

ART UNIT	PAPER NUMBER
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2614

MAIL DATE	DELIVERY MODE
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03/08/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/996,278	Applicant(s) GUEDALIA ET AL.	
	Examiner JOSEPH T. PHAN	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,8,10,11,15,16,18,20,21,25-27,30,31,35-37 and 40-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,8,10,11,15,16,18,20,21,25-27,30,31,35-37 and 40-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1, 5, 6, 8, 10, 11, 15, 16, 18, 20-22, 25-27, 30-32, 35-37, and 40-45 have been considered but are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 5, 6, 8, 10, 11, 15, 16, 18, 20-21, 25-27, 30-31, 35-37, and 40-45
rejected under 35 U.S.C. 102(e) as being anticipated by Frerichs et al., Patent #6,684,249.**

Regarding claims 1 and 11, Frerichs teaches a system and method for audio streaming(Fig.1), the system and method comprising:

an audio streaming server providing an audio stream(Fig.1, col.4 lines 1-18, col.6 lines 20-22), a client including a buffer storing at least portions of said audio stream received from said audio streaming server(Fig.2, col.7 lines 26-40, and col.13 lines 5-61), a buffer status sensor operative to monitor the contents of said buffer, and to monitor a rate of said audio stream, said buffer status sensor including an audio sampler for sampling portions of said audio stream(col.7 lines 1-5, 30-50, and lines 62-67, and col.14 lines 54-67), said buffer status sensor identifying, as

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a function of said playback rate and of said audio stream rate, one or more locations in said audio stream where an audio segment could be inserted(col.6 lines 23-30, col.7 lines 1-50, and col.10 lines 20-56); and

a client audio output inserter operative in response to an output from said buffer status sensor for providing a modified audio stream output including pre-recorded audio segments which were not received from said audio streaming server(col.6 lines 46-51), inserted at one or more of said audio stream locations identified by said buffer status sensor(col.6 lines 31-42, col.7 lines 41-52, and col.10 lines 20-56).

Regarding claims 5 and 15, Frerichs teaches a system and method according to claims 2 and 12 and wherein said inserted audio segments comprise advertisements (col.13 lines 48-64 and col.14 lines 54-67).

Regarding claims 6 and 16, Frerichs teaches a system and method according to claims 1 and 11 and wherein said client comprises a telephone(col.11 lines 10-12).

Regarding claims 8 and 18, Frerichs teaches a system and method according to claims 1 and 11 wherein said client comprises a telephone and an IVR(col.11 lines 6-21).

Regarding claims 10 and 20, Frerichs teaches a system and method according to claims 1 and 11 and wherein said client provides a real time output(col.7 lines 51-58).

Regarding claim 21 and 31, Frerichs teaches a system and method for providing seeking in an audio stream(Fig.1), the system and method comprising an audio streaming server providing an audio stream an audio sampler, sampling said audio stream, and identifying portions of said audio stream in a sequential order as found in the audio stream(col.6 lines 23-30, col.7 lines 1-50, and col.10 lines 20-56);

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an audio sampling store, storing said portions identified by said audio sampler; and an audio stream portion navigating seeker operative to sequentially play said identified portions in said sequential order; and operative to insert at least one informational audible tone among said played portions(col.6 lines 31-42, col.7 lines 41-52, and col.10 lines 20-56).

Regarding claims 25 and 35, Frerichs teaches a system and method according to claims 21 and 31 and wherein said audio sampler samples portions which are selected generally periodically(col.13 lines 25-32 or col.14 lines 1-10).

Regarding claims 26 and 36, Frerichs teaches a system and method according to claims 21 and 31 and wherein said audio stream portion navigating seeker is operative to play said portions via a telephone(col.13 lines 48-64 and col.14 lines 54-67).

Regarding claims 27 and 37, Frerichs teaches a system and method according to claims 21 and 31 and wherein said audio stream portion navigating seeker is operative to render via an IVR and a telephone(col.11 lines 6-21).

Regarding claims 30 and 40, Frerichs teaches a system and method according to claims 21 and 31 and also comprising a user operative, seeking responsive audio stream player, operative to play the audio stream beginning from a sampled portion selected by a user(col.13 lines 22-64).

Regarding claims 41 and 42, Frerichs teaches the method of claim 11 and system of claim 1 wherein said client audio output inserter provides audible cues from a sample of audio selected by a user(col.6 lines 23-30, col.7 lines 1-50, col.10 lines 20-56);

Regarding claims 43-45, Frerichs teaches the system and method of claims 1, 11, and 31 wherein said pre-recorded audio segments, said providing a modified audio stream, and at least

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one audio tone includes one of background noise and background music(col.14 lines 5-14)

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH T. PHAN whose telephone number is (571)272-7544. The examiner can normally be reached on Mon-Fri 9am-6:30pm EST, off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph T Phan/
Examiner, Art Unit 2614